Supreme Court, U.S.
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No. 97-1341

In The

Supreme Court of the United States

OCTOBER TERM, 1997

MONEM KABIR

Petitioner,

V.

SILICON VALLEY BANK

ROBERT MCMILLAN

MICHAEL HANSEN

Respondents.

On Petition For Writ Of Certiorari
To The California State Supreme Court

PETITIONER'S REPLY BRIEF

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OBJECTION TO BRIEF IN OPPOSITION

Petitioner objects to the filing of Respondents "Brief in Opposition" as he is informed and believes that it is violative of Rules 5 and 9 of Rules of the Supreme Court of the United States in that counsel for Respondents has not been admitted to practice before this Court.

Secondly, Respondents offer no court documents to substantiate their "Statement of Facts" except for one quote from Judge Herlihy taken out of context.

Last, Petitioner requests that Respondents' Statement of Facts be stricken on grounds that is prejudicial, irrelevant, misleading and an attempt to misdirect the Court's attention from the issues on appeal.

Petitioner therefore asks that the Brief in Opposition be stricken in its entirety.

I. INTRODUCTION

This brief is submitted by Monem Kabir ("Petitioner") in a timely manner, under Rule 15.6 of the Rules Of The Supreme Court Of The United States, in reply to the Brief in Opposition ("Opposition") filed by Respondents Silicon Valley Bank ("SVB") Robert McMillan, and Michael Hansen. Respondents offer no opposition beyond their misrepresentations in the Statement of Facts, and cite no legal no authority contrary to Petitioner's Fourteenth Amendment arguments.

Respondents have chosen not to address the core arguments at the heart of Petitioner's brief. In fact, Respondents' brief demonstrates why and how the situation giving rise to Petitioner's brief has occurred.

II. THE RESPONDENTS OPPOSITION DEMONSTRATES WHY THE COURT SHOULD GRANT PETITIONER'S PETITION

Respondents' Counsel's misrepresentation and bending of facts is a true measure of the reality of this case. Petitioner responds to Respondents' specific representations as follows:

There have never been any allegations or evidence presented regarding USM Technology, Inc. being in violation of any covenants requiring the filing of financial information in a timely manner. If this is a defense for Respondents in the new litigation involving the same parties, this is the first time it has been raised in this litigation in seven years. (Brief In Opposition, para. 1, pg. 2.)

Respondents fail to mention that there were witnesses present at the meeting they are discussing, who testified that Mr. McMillan was the belligerent party. Further, there were apology letters written by Mr. McMillan to the Petitioner regarding Mr. McMillan's inappropriate behavior that were presented as evidence at the trial. (Brief In Opposition, para. 2, pg.2.)

Respondents misrepresent the facts by attempting to tar the Petitioner with information not otherwise introduced at trial. Mr. McMillan sent an apology letter to the Petitioner and this was presented as evidence during the trial. This action contradicts the Respondents' position. Respondents' statement that McMillan's discovery of fraud becomes even more unfounded when the judgment in the trial of October 6, 1995, is reviewed. (Petition, Appendix "B") The court found there was no fraud. (Brief In Opposition, para. 3, pg. 2.)

In the court testimony presented at trial, evidence was given as to libelous remarks directed at plaintiffs, including allegations of theft, made by Respondents and management of USM Technology, Inc.. Petitioner's Co-plaintiff, Mr. Ruebusch, was awarded $80,000.00 in damages for these remarks. The Respondents would like the court to believe that they prevailed

on their fraud action in cross-complaint. They did not. (See the Judgment Ruling, Petition, Appendix "B") (Brief In Opposition, para. 4, pg. 2 and 3.)

Furthermore, Mr. Choe admitted to being an agent of Silicon Valley Bank by a verified answer to the complaint in the companion case, Kabir and Ruebusch v. Silicon Valley Bank, et al., Superior Court of the State of California County of Santa Clara case number CV760042 where he states:

> "as and for a eighteenth affirmative defense, this answering defendant alleges that plaintiff's third cause of action is barred, in whole or in part, in that any acts this defendant committed which are a basis of said cause of action were justified to protect legitimate business interest of defendant SVB." Underlining added. (Brief In Opposition, para. 5, pg. 3.)

Respondents are correct to the extent that Respondents have denied the allegations of the subsequent "companion case." Their exclusions, however, amount to intentional misrepresentations. There has been no adjudication of these facts, except that Respondents and Co-defendants have failed on three demurrers and one Motion for Summary Judgment to have Petitioner's claims thrown out of court. Superior Court of the State of California County of Santa Clara case number CV760042 includes causes of action for Fraud, Conspiracy to Defraud, Intentional Interference With Economic Relationship against Silicon Valley Bank, McMillan, certain officers and remains very active. (Brief In Opposition, para. 6, pg. 3.)

The Respondents mislead the courts by failing to mention that the restraining order of July, 1995, was granted at an ex-parte hearing and was overturned on First Amendment grounds at a hearing for permanent injunction as soon as Petitioner's attorney returned from vacation. Further, the pending injunctions granted in the fall of 1996 (in the subsequent "companion case") were interestingly, granted after a year and a half of Petitioner's

publishing of over 40 issues of the "Do You Know The Truth? " newsletter and are on appeal with the State of California, Sixth District Court of Appeals. (Brief In Opposition, para. 7, pg. 4.)

The issues raised by Petitioner regarding the jury instructions were timely and properly raised during the Appeal process according to the rules of the California Sixth Appellate District Court and the California Rules of Appeals Court. No opinion issued by the Appellate Court has held there were any improprieties in this regard. (Brief In Opposition, para 8, pg. 4.)

The Petitioner was not found to have negligently misrepresented information with the intent to defraud. (Please refer to the Judgment upon jury verdict in the Petition filed, in Appendix "B", under section "VI and VII" for a true representation of the verdict. (Brief In Opposition, para. 9, pg. 4.)

Respondents' own pleadings contradict their Statement of Facts. The affidavits filed by the Respondents counsel in the Respondents' Notice Of Motion For Sanctions filed on January 21, 1997 in the California Sixth Appellate District Court states that he is requesting reimbursement of his fees which were incurred due to among other things, "selecting transcript citations." The Respondents had the court transcripts. The sanctions requested were for $19, 524.50, the sanctions awarded and now part of this action before the court were for $10,000.00. In Respondents' opening paragraph to this section they refer to a sixteen-day trial, including the testimony of nineteen witnesses. Further, the transcript purchases made at trial were by the Co-Plaintiff, Mr. Ruebusch, and totaled under $250.00; hardly a record of this case. (Brief In Opposition, para. 10, pg. 5.)

The trial court has the authority, certainly, to require Petitioner to rewrite his Settled Statement. Respondent cites no authority for his proposition that the court may simply engross the opposing party's "summary" to settle its confusion. The petitioner must engross the settled statement under California Rules of Court, Rule 7. (Brief In Opposition, para. 11, pg. 5.)

Details of the Respondents' objection to the Petitioner's

Statement of Facts were omitted from the Brief in Opposition. Their objections have no factual basis and are nothing more than unsubstantiated opinion. Their objections should be ignored by the court. (Brief In Opposition, para. 12, pg. 7.)

Even if the Court accepts the version of facts in the Brief in Opposition as mere disagreement of fact between two parties, Petitioner's argument becomes self-evident. An indigent litigant has no access to a transcript to resolve the issue in his favor. Further, it is not a private issue, nor personal to Petitioner, when indigents in California are denied equal access and equal protection under the law as guaranteed by the Fourteenth Amendment to the United States Constitution. Only the presentation of the documents or transcripts themselves will provide a clear picture and answer the dispute regarding the facts.

III. REPLY TO LIMITED RESPONSE TO PURPORTED REASONS TO GRANT PETITION

Petitioner's legal arguments supporting the Petition for Writ of Certiorari are unchallenged. Respondents do not address the legal issue of equal protection under the law and access to justice guaranteed by the Fourteenth Amendment to the United States Constitution and how California Rules of Court, Rule 7, violates this guarantee.

Respondents' mere statement that California Rules Of Court, Rule 7, is available for anyone's protection doesn't address the issue that equal protection under the law is denied thereby, regardless of how many people use it. A law that cannot pass muster, should not be tauted as a placebo for the lower income and indigent population.

Further, the argument that "the portion of the settled statement prepared by Respondents had no relation to the principle reasons that the California appellate court cited for affirming the judgment" is a peculiar one to raise at this juncture. Respondents quote the Honorable Judge Herlihy when the

Petitioner's entire settled statement is erroneously rejected outright by the court and the Respondents entire Amendments to the Settled Statement was accepted. Even if the court reviews the Honorable Judge Herlihy's Statement,

> "But the problem with your statement is that it's -- it's just -- three quarters of it is argument. It's just not what the Court or the rules have in mind in terms of a settled statement."

There is no finding or indication of misrepresentation in appellant's Settled Statement, simply a disagreement on its contents. This disagreement was decided, wrongly, by substituting Respondents' Amendments for a true Settled Statement engrossed by petitioner. This action left the Petitioner without evidence for his issues on Appeal, which evidence did exist in the court transcript.

Respondents would have the court believe their "summary" reflected Petitioner's own facts. It did not.

CONCLUSION

The petition for a writ of certiorari should be granted to resolve disputed issues on Appeal and to protect ordinary citizens of this land against misrepresentations in the court system and provide equal access to justice for a class of litigants who are barred from court transcripts for economic reasons.

Respectfully submitted,

3/24/1998

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